

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BENJAMIN JUSTIN BROWNLEE,

Plaintiff,

v.

J. BURNES, ET AL.,

Defendants.

1:23-cv-00376-JLT-HBK (PC)

SECOND SCHEDULING ORDER

ORDER DIRECTING CLERK'S OFFICE TO
SEND LOCAL RULE 281 TO PLAINTIFF

Pretrial Conference

March 2, 2026 at 1:30 p.m.
District Judge Jennifer L. Thurston
In Courtroom 4, 7th floor

Jury Trial

April 7, 2026 at 8:30 a.m.
District Judge Jennifer L. Thurston
In Courtroom 4, 7th floor

Benjamin Justin Brownlee ("Plaintiff") is a state prisoner proceeding pro se and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds on Plaintiff's First Amended Complaint, filed on October 10, 2023, alleging an Eighth Amendment excessive use of force claim against Defendants Burnes, Rivera, Rodriguez, and Flores; an Eighth Amendment sexual assault claim against Defendants Rivera and Rodriguez; and an Eighth Amendment failure to intervene claim against Defendant Flores. (Doc. Nos. 18, 21, 23.)

1 On June 20, 2024, the Court issued a Discovery and Scheduling Order establishing pretrial
2 deadlines, including a discovery deadline of March 26, 2025, and a dispositive motion filing
3 deadline of June 19, 2025. (Doc. No. 38.) On July 17, 2025, the parties participated in a
4 settlement conference before Magistrate Judge Erica Grosjean, which resulted in an impasse.
5 (Doc. No. 69.) On July 22, 2025 the Court reset the dispositive motion deadline to September 10,
6 2025, because the parties were engaged in settlement discussion when the initial deadline passed.
7 (Doc. No. 71.) All deadlines have now expired, and no motions are pending. Based on this
8 record, pursuant to Rule 16(b) of the Federal Rules of Civil Procedure, the court will set a further
9 schedule for this litigation.

10 The parties are required to file pretrial statements in accordance with the schedule set forth
11 herein. In addition to the matters already required to be addressed in the pretrial statement in
12 accordance with Local Rule 281, Plaintiff will be required to make a particularized showing to
13 obtain the attendance of witnesses. The procedures and requirements for making such a showing
14 are outlined in detail below. **Plaintiff is advised that failure to comply with the procedures set**
15 **forth below may result in the preclusion of any and all witnesses named in his pretrial**
16 **statement.**

17 At the trial of this case, Plaintiff must be prepared to introduce evidence to prove each of
18 the alleged facts that support the claims raised in the lawsuit. In general, there are two kinds of
19 trial evidence: (1) exhibits and (2) the testimony of witnesses. It is Plaintiff's responsibility to
20 produce all evidence to prove his case, whether that evidence is in the form of exhibits or witness
21 testimony. If Plaintiff wishes to call witnesses to testify, he must follow certain procedures to
ensure that the witnesses will be at the trial and available to testify.

22 1. Procedures for Obtaining Attendance of Incarcerated Witnesses Who Agree to
23 Testify Voluntarily - An incarcerated witness who agrees voluntarily to attend trial to give
24 testimony cannot come to court unless this court orders the warden or other custodian to permit the
25 witness to be transported to court. This court will not issue such an order unless it is satisfied that:
26 (a) the prospective witness is willing to attend; and (b) the prospective witness has actual
27 knowledge of relevant facts.

1 A party intending to introduce the testimony of incarcerated witnesses who have agreed
2 voluntarily to attend the trial must serve and file concurrent with the pretrial statement a written
3 motion for a court order requiring that such witnesses be brought to court at the time of trial. The
4 motion must: (1) state the name, address, and prison or state hospital identification number of
5 each such witness; and (2) be accompanied by declarations showing that each witness is willing
6 to testify and that each witness has actual knowledge of relevant facts. The motion should be
7 entitled "Motion for Attendance of Incarcerated Witnesses."

8 The willingness of the prospective witness can be shown in one of two ways: (1) the party
9 himself can swear by declaration under penalty of perjury that the prospective witness has
10 informed the party that he or she is willing to testify voluntarily without being subpoenaed, in
11 which declaration the party must state when and where the prospective witness informed the party
12 of this willingness; or (2) the party can serve and file a declaration, signed under penalty of
13 perjury by the prospective witness, in which the witness states that he or she is willing to testify
14 without being subpoenaed.

15 The prospective witness's actual knowledge of relevant facts can be shown in one of two
16 ways: (1) if the party has actual firsthand knowledge that the prospective witness was an
17 eyewitness or an ear-witness to the relevant facts (i.e., if an incident occurred in Plaintiff's cell
18 and, at the time, Plaintiff saw that a cellmate was present and observed the incident, Plaintiff may
19 swear to the cellmate's ability to testify), the party himself can swear by declaration under penalty
20 of perjury that the prospective witness has actual knowledge; or (2) the party can serve and file a
21 declaration signed under penalty of perjury by the prospective witness in which the witness
22 describes the relevant facts to which the prospective witness was an eye- or ear-witness. Whether
23 the declaration is made by the party or by the prospective witness, it must be specific about the
24 incident, when and where it occurred, who was present, and how the prospective witness
25 happened to be in a position to see or to hear what occurred at the time it occurred.
26 The court will review and rule on the motion for attendance of incarcerated witnesses, specifying
27 which prospective witnesses must be brought to court. Subsequently, the court will issue the
28 order necessary to cause the witness's custodian to bring the witness to court.

1 Motions for the attendance of incarcerated witnesses, if any, must be filed on or before
2 December 5, 2025. Oppositions, if any, must be filed on or before December 29, 2025.

3 2. Procedures for Obtaining Attendance of Incarcerated Witnesses Who Refuse to
4 Testify Voluntarily - If a party seeks to obtain the attendance of incarcerated witnesses who refuse
5 to testify voluntarily, the party should submit with his pretrial statement a motion for the attendance
6 of such witnesses. Such motion should be in the form described above. In addition, the party must
7 indicate in the motion that the incarcerated witnesses are not willing to testify voluntarily.

8 3. Procedures for Obtaining Attendance of Unincarcerated Witnesses Who Agree to
9 Testify Voluntarily - It is the responsibility of the party who has secured an unincarcerated
10 witness's voluntary attendance to notify the witness of the time and date of trial. No action need
11 be sought or obtained from the court.

12 4. Procedures for Obtaining Attendance of Unincarcerated Witnesses Who Refuse to
13 Testify Voluntarily - If a prospective witness is not incarcerated, and he or she refuses to testify
14 voluntarily, the witness must be served with a subpoena. *See* Fed. R. Civ. P. 45. In addition to
15 serving the unwilling witness with a subpoena, the party seeking the witness's presence must tender
16 an appropriate sum of money for the witness to appear at trial. *Id.* In the case of an unincarcerated
17 witness, the appropriate sum of money is a daily witness fee of \$40.00 plus the witness's travel
18 expenses. *See* 28 U.S.C. § 1821.

19 If Plaintiff wishes to obtain the attendance of one or more unincarcerated witnesses who
20 refuse to testify voluntarily, Plaintiff must first notify the court in writing of the name and physical
21 location of each unincarcerated witness. The court will calculate the travel expense for each
22 unincarcerated witness and notify Plaintiff of the amount(s). Plaintiff must then, for each witness,
23 submit a money order made payable to the witness for the full amount of the witness's travel
24 expenses plus the daily witness fee of \$40.00. The subpoena will not be served upon the
25 unincarcerated witness by the United States Marshal unless the money order is tendered to the
26 court. Because no statute authorizes the use of public funds for these expenses in civil cases,
27 the tendering of witness fees and travel expenses is required even if the party was granted
28 leave to proceed *in forma pauperis*.

1 If Plaintiff wishes to have the United States Marshal serve any unincarcerated witnesses
2 who refuse to testify voluntarily, Plaintiff must submit the money orders to the court no later than
3 February 2, 2026. In order to ensure timely submission of the money orders, Plaintiff must notify
4 the court of the names and physical locations of his witnesses, in compliance with step one, no later
5 than December 5, 2025.

6 The parties are advised that failure to file pretrial statements as required by this order may
7 result in the imposition of appropriate sanctions, which may include dismissal of the action or entry
8 of default.

9 Finally, the court shall direct the Clerk's Office to provide Plaintiff and Defendants with
10 consent/decline forms. Within thirty days from the date of service of this order, Plaintiff and
11 Defendants shall inform the court whether they consent to or decline Magistrate Judge jurisdiction,
12 by filling out the form and returning it to the court.

13 The parties shall appear at the Pretrial Conference with each party connecting remotely
14 either via Zoom video conference or Zoom telephone number. The parties will be provided with
15 the Zoom ID and password by Judge Thurston's Courtroom Deputy prior to the conference. The
16 Zoom ID number and password are confidential and are not to be shared. Appropriate court attire
17 is required.

18 Counsel for Defendants is required to contact Plaintiff's institution to arrange for Plaintiff's
19 participation in the Pretrial Conference. Plaintiff is a state prisoner proceeding *pro se* and *in forma
pauperis* with this civil rights action pursuant to 42 U.S.C. § 1983.

20 This order represents the Court best estimated schedule to complete this case. Any party
21 unable to comply with the dates outlined in this order shall immediately file an appropriate motion
22 or stipulation identifying the requested modification.

23 ***The dates set in this order are considered to be firm and will not be modified absent a
showing of good cause, even if a stipulation to modify is filed.*** Due to the impacted nature of the
24 civil case docket, this Court disfavors requests to modify established dates.

25 Accordingly, the court HEREBY ORDERS as follows:

26 1. The deadline for all parties to serve their expert disclosures is **December 2, 2025**.

27 Parties have until **January 2, 2026** to serve their rebuttal expert disclosures.

- 1 2. This matter is set for a Pretrial Conference on **March 2, 2026 at 1:30 p.m.** before
- 2 District Judge Jennifer L. Thurston in Courtroom 4;
- 3 3. The jury trial for this case is scheduled for **April 7, 2026 at 8:30 a.m.** before District
- 4 Judge Jennifer L. Thurston in Courtroom 4;
- 5 4. Counsel for Defendants is required to arrange for the participation of Plaintiff at the
- 6 pretrial conference by connecting remotely either via Zoom video conference or
- 7 Zoom telephone number;
- 8 5. Plaintiff shall serve and file a pretrial statement as described in this order on or
- 9 before **December 22, 2025**.
- 10 6. Defendants shall serve and file a pretrial statement as described in this order on or
- 11 before **January 22, 2026**;
- 12 7. In addition to electronically filing a pretrial statement, Defendants shall e-mail the
- 13 pretrial statement to: jlt@caed.uscourts.gov;
- 14 8. If Plaintiff intends to call incarcerated witnesses at time of trial, Plaintiff shall serve
- 15 and file a motion for attendance of incarcerated witnesses as described in this order
- 16 on or before **December 5, 2025**;
- 17 8. The opposition to the motion for the attendance of incarcerated witnesses, if any,
- 18 shall be filed on or before **December 29, 2025**;
- 19 10. If Plaintiff wishes to obtain the attendance of unincarcerated witnesses who refuse
- 20 to testify voluntarily, Plaintiff must notify the court of the names and physical
- 21 locations of his witnesses **no later than December 5, 2025** and must submit the
- 22 money orders, as described in subsection 4 of this order, to the Clerk of Court on or
- 23 before **February 2, 2026**;
- 24 11. The Clerk's Office shall send Consent/Decline to United States Magistrate Judge
- 25 Jurisdiction forms to Plaintiff and Defendant;
- 26 12. Within **thirty (30) days** from the date of service of this order, Plaintiff and
- 27 Defendants shall notify the court whether they consent to or decline Magistrate
- 28 Judge jurisdiction, by filling out the enclosed form and returning it to the court; and
13. The Clerk's Office shall send Plaintiff a courtesy copy of Local Rule 281.

1 IT IS SO ORDERED.

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3 Dated: September 25, 2025

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HELENA M. BARCH-KUCHTA

UNITED STATES MAGISTRATE JUDGE